IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 379 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAGU @ LANGADO @ MAMA MARUTI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 379 of 2000

MRS SHILPA J UNWALLA for Petitioner No. 1

THROUGH JAIL for Petitioner No. 1

Mr.I.M.Pandya, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 16/07/2003

ORAL JUDGEMENT

1. This appeal is filed by the accused of Sessions Case no.35/1997 against the judgment and order of conviction recorded by the learned Additional Sessions

Judge, Ahmedabad, City Court no.15, Ahmedabad on 10th August, 1989 convicting the present appellant for the charges levelled against him for the offences punishable under Section 8(c) and Section 20 (b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") and sentencing him for the term of four years rigorous imprisonment and to pay a fine of Rs.5000/-, and in default, to undergo further rigorous imprisonment of six months. The appellant-accused has remained in judicial custody as under trial accused for about four months, and by the above said order, the present appellant was given set off of the aforesaid undertrial period. At the time of conviction, since the appellant was on bail, he was taken in the custody on 10th August,1999.

2. The facts leading to the filing of this appeal by the appellant through jail, indicate that the incident occurred on 28th December, 1996 and one Senior Police Inspector Mr. K.A.Desai of Amraiwadi Police Station received information at 20-30 hrs. that one person Nagu alias Langdo alias Mama son of Maruti Pawar-the present appellant resident of Bhaipura Talawali Chawl had been possessing Bhang or Ganja for the purpose of sale in his shop. The information received by Mr. Desai was immediately reduced to writing. Mr. Desai subsequently informed his superiors in writing about the information received by him. Thereafter, two Panch witnesses were summoned in the Police Station and were apprised of the information received and about the raid to be carried out at the place of present appellant. Accordingly, the Panchnama to that effect in one part was prepared. The raiding party in the leadership of Senior Police Inspector Mr. Desai went to the shop of the present appellant. The appellant was informed about the search which was to be carried out. He was also informed about his right to search in the presence of any Gazetted Officer or the Magistrate. The appellant replied in the negative. On searching the shop of the appellant by the raiding party from the cold drink boxes lying in the corner of a shop, one plastic bag was found. When the said bag was opened in the presence of Panchas contraband article containing characteristic of Bhang and Ganja could be discovered. The substance found was weighed in the presence of Panchas and including the bag, it weighed about 12.200 Kgms. Out of the whole substance, samples of 100 gms. of contraband substance were taken out and were packed in different bags for examination by Forensic Science Laboratory, and one sample was to be kept as reserve. The remaining substance was also packed in the presence of Panch Witnesses and the sealing procedure was

also executed. An amount of Rs.95/- was recovered from the possession of the accused and the same was also seized in the presence of Panch Witnesses. The Panchnama of this procedure was prepared. A complaint came to be lodged against the accused. Statements of the members of the raiding party were recorded, Muddammal article was sent to Forensic Science Laboratory and the accused was arrested. After investigation was over and after receipt of the report from the Forensic Science Laboratory, a chargesheet for the above said offence was submitted against the present appellant.

3. The learned Additional Sessions Judge, Ahmedabad, City Civil Court, framed charge against the present appellant vide Exh.3 for the offences punishable under Section 8(c) read with Section 20(b)(i) of the NDPS Act. The appellant denied the charges, and therefore, the prosecution was called upon to prove its case.

4. The prosecution examined, in all, eight witnesses:

PW 1 Natwarbhai Somabhai Rathod has been examined at Exh.9 who was the Head Constable working in Amraiwadi Police Station at the relevant time and had verified the information received by the Police Inspector Mr. Desai.

PW 2 Jaswantsinh Pratapsinh Vahol has been examined at Exh.10, a Panch in respect of Panchnama Exh.21, but he did not support the prosecution case at all.

PW 3 Navalsing Lakhaji Thakore has been examined at Exh.11, a Panch in respect of Panchnama Exh.21 who also did not support the prosecution case at all.

PW 4 Mohanbhai Jametrai Jamantani has been examined at Exh.12. As per the prosecution case, he was summoned from his grocery shop with scales to weight contraband substances, but PW 4 has also not supported the prosecution case at all.

PW 5 Jayantibhai Ranchhodbhai Golthar has been examined at Exh.13. At the relevant time, he was serving as a Constable at Amraiwadi Police Station Surveillance Squad. He supported the prosecution case right from the receiving of the information up to the recovery of contraband article.

PW 6 Baburam Changosirzad has been examined at Exh.14 who recorded the written complaint given by Police Inspector Mr. Desai at 23-45 hrs. on 28th December, 1996 because at that time he was Police Station Officer. He recorded the complaint and produced the entry at Exh.15. Muddammal as seized by the Panchnama was produced before him.

PW 7 Madarsing Hathadji has been examined at Exh.17. He was at the relevant time serving as Crime Writer at Amraiwadi Police Station. According to him, on 29th December, 1996, PW 6 Baburam handed over the Muddammal of this case to him which he accepted and noted in the Register. He also forwarded required Muddammal to Forensic Science Laboratory. He identified the Muddammal in the Court.

PW 8 Karamshibhai Arjunbhai Desai has been examined at Exh.19. He was at the relevant time Senior Police Inspector at Amraiwadi Police Station and he has deposed that on receiving the information, he got it verified by the Constable. He informed his superior officer , the information was reduced to writing, raid was carried out and he filed the complaint and investigated the offence.

5. Over and above the testimonial collection of evidence, the prosecution produced at Exh.23, the information which PW 8 Karamshibhai A. Desai received and sent by him to his superior Officer vide Exh.24. A notification issued by Investigating Officer Mr. Karamshi A. Desai under Section 32 of the NDPS Act is produced at Exh.21. The written complaint given by Mr. Desai, Senior Police Inspector is produced at Exh.20. A writing to the effect that the accused was informed about his search is produced vide Exh.26. A seizure memo given to the accused is produced vide Exh.2. The information as to arrest and detention of the accused communicated to him is produced at Exh.27. The report prepared under Section 157 of the Criminal Procedure Code and forwarded to the Station Officer, Amraiwadi Police Station, is produced at Exh.28. Summary of raid carried out and forwarded to the Assistant Police Commissioner, Ahmedabad City by Mr. Karamshi Desai is produced vide Exh.29. Forwarding letter, Muddammal notes and report of Forensic Science Laboratory in respect of the substances recovered are produced vide Exhs.30, 31 and 33 respectively. The abstract of Station Diary of Amraiwadi Police Station is

produced at Exhs.15 and 22.

6. The appellant after the evidence was over, was questioned under Section 313 of the Criminal Procedure Code by the trial Court and after hearing both the sides, by judgment, the appellant was held guilty for the charges levelled against him, and was sentenced to imprisonment and fine as aforesaid.

7. Learned Advocate Mrs. Shilpa J.Unwala on behalf of the appellant submitted that while reading the charge, mention of Bhang and Ganja is confusing and the charge is not clear as to whether the accused is charged either for the contraband article Bhang or Ganja. It was also stated that in complaint of Mr. Desai, produced at Exh.20 the fact as to the information received and reduced to writing is not mentioned, and therefore, the document in this respect at Exh.23, is got up and cannot be believed. It was also submitted that deposition given by PW 1 Natwarbhai Somabhai Rathod Exh.9, PW 5 Jayantibhai Ranchhodbhai Golthar Exh.13, PW 6 Baburam Changosirzad Exh.14, PW 7 Madarsing Hathadji Exh.17 and PW 8 Karamshi A.Desai, Senior PI Exh.19 is not consistent and is full of contradictions and inspiring no confidence. It was stated that the prosecution failed to prove the Panchnama Exh.21, and therefore, the seizure also. The submission was made on the strength that both the Panchas as well as PW 4 Mohanbhai Jametrai Jamantani who were alleged to have weighed the contraband had not supported the prosecution case. Therefore, it was submitted that the mandatory provisions of Section 42, 50, 55 and 57 of NDPS Act are utterly violated or the compliance of which has not been proved beyond reasonable doubt. The sealing and seizure procedure as narrated by the prosecution witnesses cannot be said to have been proved due to contradictions. Therefore, it was submitted that the appeal be allowed and the accused be acquitted.

8. Learned A.P.P. Mr. Pandya supported the prosecution case and the judgment of the trial Court and stated that all the mandatory provisions right from Section 42 - reducing the information to writing till the information of the result of the raid to the superior officers has been duly complied with. PW 8 Karamshi Arjunbhai Desai, PW 7 Madarsing Hathadji, PW 6 Baburam Changosirzad, PW 5 Jayantibhai Ranchhodbhai Golthar and PW 1 Natwarbhai Somabhai Rathod are the witnesses of truth and their evidence cannot be thrown out on the ground that they are Police Officers. There are no contradictions in the evidence of these witnesses as to

render them untrustworthy. Their evidence is fully supported by documentary evidence produced in this case. The oral evidence supports the documentary evidence, and vice versa, the documentary evidence supports the oral evidence. The prosecution was able to prove the entire link connecting the accused with the commission of the crime establishing involvement of the accused in possessing and selling contraband article. It was, therefore, argued that the appeal has no merit and requires to be dismissed.

9. Having reappreciated the evidence fully and having scanned the testimonial as well as documentary evidence, the scenario emerges that on the basis of the information received by PW 8 Karamshi Arjunbhai Desai, PI, Amraiwadi Police Station, the raid was carried out. On the raid being carried out at the shop of the accused, contraband article was found as clearly spells out from the evidence of PW 1 Natwarbhai Somabhai Rathod, PW 5 Jayantibhai Ranchhodbhai Golthar, PW 7 Madarsing Hathadji and PW 8 Karamshi Arjunbhai Desai. It is also proved that before carrying out the raid, the accused was informed about his right to have search in presence of Gazetted Officer or the Magistrate, as the case may be, but he did not avail of the said opportunity. Provisions of Section 42 of the NDPS Act were also complied with before raiding the shop of the accused because a notification under the said Section 42 is produced at Exh.24, and there is no reason to doubt this document. There is no substance in the argument that since PW 8 Karamshi Arjunbhai Desai did not refer in his complaint at Exh.23 that information which he received was reduced to writing, the document Exh.23 is got up. When PW 8 Karamshi Arjunbai Desai and PW 1 Natwarbhai Somabhai Rathod both were tested jettison on judicial scrutiny their evidence in this respect is found to be trustworthy, and there is no reason to disbelieve them on this aspect. Mere omission in complaint about reducing the information to writing would not be fatal to the prosecution case. Exh.25 establishes that the accused was made aware of his right to have search in presence of Gazetted Officer or Magistrate. The signature of the accused on seizure memo which is produced at Exh.18 corroborates the fact that the contraband article was found from him. The document detailing the arrest of the accused and reasons thereof produced at Exh.27 corroborates the evidence of prosecution witnesses. True, it is that the Panchas have not supported the prosecution case and the Panchnama at Exh.21, and the Panchas have turned hostile declaring their ignorance about the incident. The prosecution case cannot be

thrown out because of all this, when trustworthy and reliable evidence of Police Officers is found untainted.

10. If we, again, scrutinize the details of Panchnama at Exh.21 and the evidence of PW 1, PW 5, PW 7 and PW 8, it becomes clear that not only the contraband article was found from the possession of the appellant as alleged but, procedure for seizure and sealing of samples of Muddammal was scrupulously followed, and there is no iota of doubt as to why the evidence is not acceptable. The witnesses have been cross-examined at length. Though it is argued that there are contradictions in the evidence of the prosecution, on scrutiny, it is found that no inconsistency whatsoever is found from the evidence of the prosecution as to create any doubt in the prosecution evidence. The fact remains that the accused was also found in possession of currency notes worth Rs.95/-. In framing of a case, the Investigating Agency was not required to seize the currency notes or to show that currency notes are seized. This fact lends credence to the prosecution case.

11. It could not be shown either during the trial or even demonstrated during this appeal that during raid or after raiding any mandatory provisions of NDPS has been breached. As above stated, merely non mentioning about the reducing of information received to writing in the complaint would not dislodge the prosecution case. Except three witnesses i.e. two Panch Witnesses and a witness who was called for weighing the substance, all the witnesses, though police witnesses, are found reliable and trustworthy. There are no major contradictions nor could be demonstrated as to jettison their evidence. Exh.33, a report of Forensic Science Laboratory, clearly denotes that the parcel received in this case was duly analyzed and the substance found was "cannabis sativa". Thus, the opinion of Chemical Analyzer leaves no room for doubt that what was found from the shop of the appellant was possessing contraband article so as to visit him with punishment under Section 8(c) read with Section 20(b)(i) of the NDPS Act. The judgment and order of conviction, impugned in this appeal, requires no interference.

12. In this view of the matter, this appeal fails and is dismissed.

(J.R.Vora,J.)

stanley-jrv.